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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of:)	OAH Case No. 2017120732
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	Agency Case No. 963-2147
)	
Complainant,)	FIRST AMENDED ACCUSATION
)	
v.)	Hearing Dates: June 11-13, 2018
)	Hearing Time: 9:00 a.m.
JUAN R. VILLANUEVA,)	Judge: Joseph D. Montoya
)	
Respondent.)	
)	
)	

In the Matter of the Accusation of:

THE COMMISSIONER OF BUSINESS

OVERSIGHT,

Complainant,

v.

ROSARIO NUNEZ,

Respondent.

1 Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and
2 believes, and based upon such information and belief, alleges and charges Juan R. Villanueva
3 (Villanueva) and Rosario Nunez (Nunez) as follows:

4 **I.**

5 **Jurisdiction and Venue**

6 1. The Commissioner brings this action under the provisions of Financial Code
7 section 17423 and the rules and regulations promulgated thereunder.

8 2. The Commissioner is authorized to administer and enforce the Escrow Law (Fin.
9 Code, § 17000 et seq.) and the rules issued under title 10 of the California Code of Regulations
10 (CCR) that regulate the business and activities of independent escrow agents in the state of
11 California.

12 **II.**

13 **Statement of Facts**

14 3. Omega Escrow, Inc. (Omega) was an escrow agent first licensed by the Commissioner
15 under the Escrow Law on or about July 5, 2005.

16 4. Villanueva was Omega's president and an authorized signer on the company's escrow
17 trust account held at Bank of America (ending in account number 1549).

18 5. Nunez was Omega's escrow manager and an authorized signer on the company's
19 escrow trust account held at Bank of America (ending in account number 1549).

20 6. Only Villanueva and Nunez held signing privileges on the Omega Bank of America
21 trust account ending in account number 1549.

22 7. On or about February 16, 2015, Villanueva applied to the Department to approve the
23 transfer of Omega's ownership by submitting a signed corporate resolution that rescinded a previous
24 resolution to surrender Omega's escrow agent's license, and to acknowledge that he was to remain
25 responsible for the company's operations and management until the Department accepted and
26 approved the change of ownership application.

27 8. The Department issued the Omega an amended escrow agent's license on September
28 10, 2015, approving Omega's request to change its name to Trilogy Escrow, Inc. (Trilogy).

9. In or about December 2015, Trilogy closed Omega's trust account held with Bank of America (ending in account number 1549).

10. On or about February 1, 2016, the Department approved Villanueva's change of ownership request, allowing him to sell his 100-percent ownership stake in the company to Collaboration888, LLC.

11. Trilogy's annual audit report for its fiscal year ended December 31, 2015 was due by April 15, 2016. During the preparation of Trilogy's annual audit report, the new owners discovered a trust shortage in Omega's trust account and ledger of approximately \$13,431.89. The trust shortage appeared in Omega's trust account held at Bank of America (ending in account number 1549). According to Trilogy's certified public accountant, the trust shortage could be traced to two unauthorized cash withdrawals, a bank fee, and unauthorized escrow fees.

12. In or about April 2016, Trilogy's new owners, in order to correct the trust shortage in Omega's trust account, transferred funds from the company's general account to the new trust account held at California Republic Bank. In May and November 2016, the new owners escheated \$13,431.89 in funds to the State Controller's Office on behalf of Omega.

13. A review of Omega's trust account records disclosed that the month-end bank statement (for the Bank of America trust account ending in 1549) reflected a \$9,000.00 cash withdrawal on or about October 19, 2015. The cash withdrawal was not accompanied by a withdrawal slip or any other written documentation.

14. A second cash withdrawal appeared on Omega's December 2015 month-end bank statement, which showed \$1,201.94 was withdrawn from the Bank of America trust account on or about December 10, 2015. The cash withdrawal was not accompanied by a withdrawal slip or any other written documentation.

15. According to Bank of America representatives, the bank will log a cash withdrawal when the requested amount exceeds \$10,000.00. For withdrawals of less than \$10,000.00, the bank teller will verify the requestor's identification with the signature card on file with the bank, but the bank teller is not required to log the requestor's identity.

16. Both Villanueva's and Nunez's names and signatures appear on the signature cards for Omega's Bank of America trust account ending in 1549.

17. On or about October 19, 2015, Villanueva or Nunez or both made an unauthorized disbursement of \$9,000.00 from Omega's Bank of America trust account (ending in 1549) in violation of Financial Code section 17414, subdivision (a)(1).

18. On or about December 10, 2015, Villanueva or Nunez or both made an unauthorized disbursement of \$1,201.94 from Omega's Bank of America trust account (ending in 1549) in violation of Financial Code section 17414, subdivision (a)(1).

19. The Department's examiner's review of Omega's Bank of America trust account records further disclosed at least three transactions in which Villanueva made unauthorized disbursements of trust funds in violation of Financial Code section 17414, subdivision (a)(1), as follows:

- (a) A \$5,000.00 cash withdrawal on or about March 21, 2014;
- (b) A \$375.00 rent payment on or about July 1, 2014 (trust check number 3648); and
- (c) A \$6,000.00 cash withdrawal on or about July 10, 2014.

20. In each of the three transactions described above in paragraph 19., Villanueva's name, signature, or both appears on the cash withdrawal slips and the check copy provided by the bank. Neither Villanueva, Omega, or Trilogy could produce written authorizations demonstrating that the three transactions were authorized by the principals to the escrow or that the transaction was in any way related to the escrow files held by Omega.

III.

Applicable Statutes

21. Financial Code section 17414 provides:

(a) It is a violation for any person subject to this division or any director, stockholder, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of escrow funds otherwise than in accordance with escrow instructions, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity which constitutes theft or fraud in connection with any escrow transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission to state a material fact, orally or in writing, in escrow books, accounts, files, reports, exhibits, statements, or any other document pertaining to an escrow or escrow affairs.

(b) Any director, officer, stockholder, trustee, employee, or agent of an escrow agent, who abstracts or willfully misappropriates money, funds, trust obligations or property deposited with an escrow agent, is guilty of a felony. Upon conviction, of an offense under this section or similar offenses specified in Chapter 4 (commencing with Section 470), Chapter 5 (commencing with Section 484), or Chapter 6 (commencing with Section 503) of Title 13 of Part 1 of the Penal Code, the court shall, in addition to any other punishment imposed, order the person to make full restitution, first to the escrow agent and then to Fidelity Corporation, to the extent it has indemnified the escrow agent. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

(c) Any person subject to this division who knows of a person's involvement in an abstraction or misappropriation of money, funds, trust obligations, or property deposited with a licensed escrow agent shall immediately report the abstraction or misappropriation in writing to the commissioner and to Fidelity Corporation. No person shall be civilly liable for reporting as required under this subdivision, unless the information provided in the report is false and the person providing false information does so with knowledge and malice. The reports filed under this section, including the identity of the person making the filing, shall remain confidential pursuant to state law.

22. Financial Code section 17423 provides in pertinent part:

(a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any escrow agent, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the escrow agent or to the public.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any escrow processing activities, including disbursing any trust funds in the escrow agent's possession, custody or control, and the financial institution holding trust fluids shall be so notified by service of the notice, accusation and other administrative pleadings. The prohibition against disbursement of trust funds may be set aside, in whole or in part, by the commissioner for good cause.

(d) Fidelity Corporation shall disclose to all licensees the identity of persons who have been censured, suspended, or barred from any position of employment, management, or control.

(e) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensed escrow agent and from engaging in any business activity on the premises where a licensed escrow agent is conducting escrow business. This subdivision shall not be construed to prohibit suspended or barred persons from having their personal escrow transactions processed by a licensed escrow agent.

(f) This section shall apply to any violation, conviction, plea, or judgment occurring at any time prior to and after the enactment of this section.

(g) The provisions of Section 17414.1 exempting convictions for which a person has obtained a certificate of rehabilitation from the prohibition against serving as an officer, director, stockholder, trustee, agent, or employee of an escrow agent, or in any position involving any duties with an escrow agent, shall not apply to permit the reinstatement of any

person barred by the commissioner pursuant to this section, nor to prohibit the commissioner from bringing any action pursuant to this section.

(h) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

IV.

Prayer

The Commissioner finds that Villanueva and Nunez violated Financial Code section 17414, subdivision (a)(1), and based thereon, it is in the best interest of the public to bar Villanueva and Nunez from any position of employment, management, or control of any escrow agent or suspend both from any position of employment, management, or control of any escrow agent for a period not exceeding 12 months under Financial Code section 17423.

WHEREFORE, IT IS PRAYED that:

Respondents Juan R. Villanueva and Rosario Nunez be barred from any position of employment, management, or control of any escrow agent or, in the alternative, suspended from any position of employment, management, or control of any escrow agent for a period not exceeding 12 months.

Dated: May 16, 2018

Los Angeles, California

JAN LYNN OWEN

Commissioner of Business Oversight

By _____

Blaine A. Noblett
Senior Counsel
Enforcement Division